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STATE OF MONTANA  
BEFORE THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION  
NANCY KEENAN

\* \* \* \* \*

MARY ANN ZORN,	)	
	)	
Appellant,	)	
	)	<u>DECISION AND ORDER</u>
vs.	)	<u>OSPI 149-88</u>
	)	
BOARD OF TRUSTEES	)	
COUNTY SCHOOL DISTRICT #2	)	
TOOLE COUNTY	)	
SUNBURST, MONTANA	)	

\* \* \* \* \*

STATEMENT OF THE CASE

This matter is on appeal to the State Superintendent of Public Instruction in accordance with 10.6.122 ARM. Notice of appeal was filed with the State Superintendent of Public Instruction on July 18, 1988.

The issue before the State Superintendent is: Whether the Order of Toole County Superintendent of Schools granting the District's motion to dismiss is affected by an error of law. The Order granting the Motion to Dismiss is based on the County Superintendent's conclusion that the Notice of Appeal filed by Zorn does not present a "contested case." Rule 10.6.102 ARM states: "'Contested case' means any proceeding in which a determination of legal rights, duties or privileges of a party is required by law."

1 Background

2 Appellant, Mary Ann Zorn, was a nontenured teacher employed  
3 by Respondent, School District #2, Toole County, Montana. Ms.  
4 Zorn filed an appeal with the Toole County Superintendent of  
5 School after she received notice that her contract would not  
6 be renewed for the 1988-89 school year. The Toole County  
7 Superintendent granted the District's Motion to Dismiss Zorn's  
8 appeal for lack of jurisdiction.

9 Procedure before the County Superintendent

10 The Notice of Appeal filed by Zorn, a nontenured teacher,  
11 with the Toole County Superintendent of Schools states in  
12 pertinent part:

13 The grounds for appeal are as follows:

14 1. The decision is in violation of constitutional or  
15 statutory provisions and totally lacking in due process  
of law;

16 2. The decision is in excess of the authority of the  
Board and in bad faith;

17 3. The decision is made upon unlawful procedure, and the  
18 proceedings did not comply with the essential requirement  
of law;

19 4. The decision is clearly erroneous in view of the  
20 reliable, probative and substantial evidence on the whole  
21 record; there is no competent, substantial evidence on  
the record to support said termination;

22 5. The decision was arbitrary or capricious or  
23 characterized by an abuse of discretion or a clearly  
unwarranted exercise of discretion;

24 6. Although she requested it, Mary Ann Zorn was never  
25 told of the charges against her and was denied in bad  
faith an opportunity to first receive a written statement

1 of alleged deficiencies or charges and thereby deprived  
2 of the right to know and understand the same, as well as  
being denied the right to confront her accusers, who were  
never identified to her;

3  
4 7. The meeting of April 25, 1988, was an unlawful  
proceeding conducted for the purpose of attempting to  
5 terminate Mary Ann Zorn, notwithstanding the fact that  
the entire matter of the purported termination of Mary  
6 Ann Zorn was totally completed and resolved at a the  
previous regularly scheduled School Board meeting of  
7 April 13, 1988, which resulted in the automatic rehiring  
of Mary Ann Zorn for the coming year, pursuant to 20-4-  
206(1) and Board policy;

8  
9 8. This Appeal is further based on the grounds that the  
Board of Trustees attempted to change law and its own  
10 policies ex post facto at the meeting on April 25, 1988,  
to reverse the effect of the vote resulting in Mary Ann  
11 Zorn being automatically rehired. Further, the Board  
illegally attempted to retroactively suspend its own  
12 operating rules in the course of a scheme to illegally  
terminate Mary Ann Zorn's employment. Such action were  
13 in bad faith and constituted a denial of due process,  
equal protection, violation of Mary Ann Zorn's civil  
rights, and clear cut fraud and indirection;

14  
15 9. The Board had no authority to attempt to, and cannot  
legally, reverse the vote of April 13, 1988. Under the  
16 Board's policy, a motion to reconsider must be brought as  
follows:

17 "1140P Parliamentary Procedures (5)(3).  
18 Reconsider. A motion can be brought back to  
the table by a member of the Board provided  
19 that such a motion is madfe (sic) by a member  
of the majority when the issue was last voted  
20 on."

21 The motion to terminate Mary Ann Zorn was not and could not  
be brought up by a majority when the motion to terminate was  
22 voted on, because the original motion to terminate on April  
13, 1988, failed for lack of a majority. In addition, the  
23 Board's rules require that the motion to reconsider be  
brought the same day as the original motion. Roberts Rules  
24 require the same result. Therefore, no motion to reconsider  
could be legally brought up at the meeting on April 25,  
1988;

1 10. There is no evidence in the record and certified  
2 transcript prepared by Robert Gresczyk, official court  
3 reporter of the Ninth Judicial District Court, who was  
4 personally present and recorded the entire proceeding, to  
5 support and justify termination of Mary Ann Zorn based upon  
6 her competence and performance as a teacher. There was no  
7 evidence whatsoever presented at the proceeding to prove  
8 that Mary Ann Zorn's performance as a teacher was  
9 inadequate. These proceedings are a sham.

10 On May 4th, Respondent School District #2, submitted a  
11 MOTION TO DISMISS alleging the fact the District had just  
12 received Appellant's request for reasons for her nonrenewal  
13 pursuant to Section 20-4-206, MCA, on May 2, 1988, and the  
14 statute gives the District 10 days in which to respond to the  
15 request. The District contended the appeal was premature.

16 On May 6th, Appellant filed her OBJECTIONS TO MOTION TO  
17 DISMISS in which she alleged that she had received notice of  
18 the reasons for her nonrenewal from the District.

19 On May 12, Appellant through her attorney sent a letter to  
20 the County Superintendent in which she set forth the following  
21 constitutional basis for the appeal: "Article 2, Section XVI,  
22 Article 2, Section XVII and Article 2, Section XXXI."

23 On May 18, Respondent filed a RENEWED MOTION TO DISMISS  
24 alleging that the County Superintendent has no jurisdiction to  
25 hear the appeal because "[I]t is well settled in Montana that  
the County Superintendent's scope of review upon an appeal  
from the nonrenewal of a nontenured teacher is limited to  
whether or not the reasons meet the test set forth in Bridger

1 Education Assn. v. Board of Trustees, \_\_\_\_\_ Mont. \_\_\_\_\_, 678  
2 P.2d 659, 41 St. Rptr. 533 (1984).

3 On June 1, 1988, counsel for Zorn filed a MOTION TO WITHDRAW  
4 AS COUNSEL OF RECORD based on the request of Zorn that she do  
5 so.

6 On June 7, counsel for Zorn filed a NOTICE OF WITHDRAWAL,  
7 MOTION TO WITHDRAW AS COUNSEL AND REQUEST FOR BRIEFING  
8 SCHEDULE.

9 On June 9th, counsel for Zorn filed RENEWED MOTION FOR  
10 BRIEFING SCHEDULE AND HEARING ON THE ISSUE OF JURISDICTION  
11 with accompanying PRELIMINARY MEMORANDUM. The Preliminary  
12 Memorandum sets forth alleged facts which raise the following  
13 issues: (1) Whether the notice of nonrenewal of Zorn's  
14 contract was timely under the terms of her contract with the  
15 District; and (2) Whether or not the District violated its  
16 contract with Zorn by not following its own rules and  
17 regulations in deciding not to renew the contract of Zorn.

18 On June 13, the County Superintendent issued her NOTICE OF  
19 RECEIPT OF APPEAL AND ORDER in which she made the following  
20 findings:

21 1. Under Section 20-3-324(1) Montana Code Annotated  
22 (1987) the Respondent, Board of Trustees of School  
23 District No. 2, Toole County, Montana, in their sole  
discretion has the power and duty to employ and dismiss  
school district employees.

24 2. The reasons given by Respondent, Board of Trustees,  
25 to Appellant, Mary Ann Zorn, terminating Appellant's non-  
tenure contract were sufficient under Bridger Education

1 Association v. Board of Trustees, Carbon County School  
2 District No. [2] 678 P2d 659 (Mont.)1984.

3 3. No school controversy has been presented by Appellant  
4 under the Uniform Rules for School Controversy under  
5 Section 10.6.101 of the Administrative Rules of Montana.

6 4. The Toole County Superintendent of Schools lacks  
7 jurisdiction of this matter.

8 IT IS HEREBY ORDERED that the appeal of Appellant, Mary Ann  
9 Zorn be and the same is hereby dismissed because a contested  
10 case has not been presented under the uniform administrative  
11 Rules for School Controversy and because of lack of  
12 jurisdiction of the County Superintendent of Schools.

13 On June 15, 1988, Zorn filed a MOTION TO RECONSIDER. The  
14 record transmitted by the County Superintendent to the State  
15 Superintendent fails to show that the County Superintendent  
16 ruled on this motion.

17 Having reviewed the record pursuant to 10.6.118 ARM, and the  
18 briefs submitted in this matter, this State Superintendent now  
19 enters her:

#### 20 CONCLUSIONS OF LAW

21 1. The State Superintendent has jurisdiction of this matter  
22 in accordance with Section 20-3-210(3), MCA.

23 2. Given the terms of the 1987-88 contract between the  
24 District and Appellant, the County Superintendent has  
25 jurisdiction to hear and decide the following two issues:

(a) Whether Appellant's contract with the District  
was unconstitutionally impaired when the District relied  
on Section 20-4-206(1), as amended, and did not notify

her of its decision not to renew her contract until after April 15, 1988; and

(b) Whether the District violated the terms of its contract with Appellant by not following its policies in reaching the April 25, 1988 decision not to renew her contract.

3. Items 7, 8 and 9 of the NOTICE OF APPEAL supported by Appellant's Preliminary Brief raise the issues stated in 2.(a) and (b) above.

4. Issues 2.(a) and (b) above are contested case matters under 10.6.102 ARM. Neither of these issues were before the court in Bridger Education Assn. v. Board of Trustees, \_\_\_\_\_ Mont. \_\_\_\_\_, 678 P.2d 659, 41 St. Rptr. 533 (1984).

5. The June 13, 1988 Order of the Toole County Superintendent of Schools is affected by error of law.

Based on the foregoing Conclusions of Law this State Superintendent now enters her:

ORDER

The Toole County Superintendent of Schools decision to grant Respondent's motion to dismiss for lack of jurisdiction is reversed. This case is remanded to the Toole County Superintendent with instructions to decide the follow two issues:

1 (1) Whether Appellant's contract with the District was  
2 unconstitutionally impaired when the District relied on  
3 Section 20-6-206(1), as amended, and did not notify her of its  
4 decision not to renew her contract until after April 15, 1988;  
5 and

6 (2) Whether the District violated the terms of its contract  
7 with Appellant by not following its policies in reaching the  
8 April 25, 1988 decision not to renew her contract.

9 Issue (1) is a question of law and can be decided on the  
10 briefs of the parties. Issue (2) involves issues of fact and  
11 will require that the County Superintendent hold an  
12 evidentiary hearing. This hearing shall be limited to  
13 accepting evidence of the policies of the Board for deciding  
14 whether to renew a nontenured teacher's contract and the  
15 actual procedures followed by the Board to reach its decision  
16 not to renew Appellant's contract.

17 MEMORANDUM OPINION

18 Section 20-3-210, MCA gives a county superintendent  
19 authority to hear controversies arising in the county as a  
20 result of decisions of the trustees of a district in the  
21 county. That section also instructs that the county  
22 superintendent shall hear the appeal and take testimony. The  
23 State Superintendent of Public Instruction is authorized by  
24 Section 20-3-107(3) to establish a uniform method of hearing



1 and determining matters of controversy arising under title 20.  
2 The uniform method established is set forth in the  
3 Administrative Rules of Montana 10.6.101 through 10.6.130.  
4 Rule 10.6.105 ARM states the requirements of the Notice of  
5 Appeal to the County Superintendent.

6 The Notice of Appeal filed with the County Superintendent by  
7 Zorn is somewhat confusing. Items 1 through 5 of the Notice  
8 appear to be based on the erroneous assumption that the County  
9 Superintendent is limited to a review of the record before the  
10 Board of Trustees. These items of the Notice are more  
11 appropriately used in school controversies appealed to the  
12 state superintendent where review is limited to the record  
13 developed before the County Superintendent. The County  
14 Superintendent is authorized to hold a hearing and take  
15 testimony and receive documentary evidence from the parties.

16 Appellant in this matter had executed an individual  
17 contract with the District that contains the following clause:

18 IT IS AGREED AND UNDERSTOOD that the school laws and  
19 regulations of the State of Montana and the policies set  
20 forth by the Board of Trustees and the District  
Superintendent for the government of the School are  
hereby made a part of this contract.

21 Parties to a contract are entitled to a proceeding in which  
22 their legal rights, duties or privileges can be determined.  
23 The County Superintendent has jurisdiction to decide whether  
24 the Board of Trustees complied with the above contract term.

1 Appellant's Notice of Appeal, items 7, 8 and 9 constitute a  
2 contested case as defined in 10.6.102 ARM.

3 A nontenured teacher does not have a property interest in  
4 continuing employment with the district beyond the term of the  
5 contract. Property interests are not created by the  
6 constitution. Property interests "are created and their  
7 dimensions are defined by existing rules or understandings  
8 that stem from an independent source such as state law."  
9 Board of Regents v. Roth, 408 U.S. 564 (1972).

10 Appellant's Notice of Appeal does not allege facts that can  
11 be used to conclude that the District has deprived her of a  
12 liberty interest. Therefore, Appellant is not entitled to the  
13 type of hearing described in item 6 of the Notice of Appeal.

14 Item 10 of the Notice of Appeal is controlled by the Supreme  
15 Court holding in Bridger. A nontenured teacher's right to  
16 challenge the reasons enunciated by the Board is limited to  
17 whether she received "notice which states what undesirable  
18 qualities merit a refusal to enter into a further contract."

19 This case is remanded to the Toole County Superintendent of  
20 Schools.

21 DATED THIS 26 day of June, 1989.

23 Nancy Keenan  
24 NANCY KEENAN  
25 State Superintendent

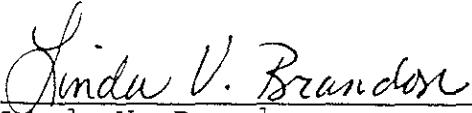
CERTIFICATE OF SERVICE

This is to certify that on the 27<sup>th</sup> day of June, 1989, a true and exact copy of the foregoing DECISION AND ORDER was mailed, postage prepaid, to:

Charles Erdmann  
Erdmann & Wright  
P.O. Box 5418  
Helena, MT 59604

Louise Lorenzen  
County Superintendent of Schools  
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